In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 12161 of 2007

Date of Decision: 9.8.2007

Harsh Pal and others

....Petitioners.

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice M.M.S. Bedi.

Present: Mr. G.S. Bal, Advocate
for the petitioners.

...

J.S. Khehar, J.

All the petitioners were inducted into the service of the Police Department against the rank of Constable. They claimed to their credit acts of bravery and courage for which they were granted commendation certificates. On the basis of the recommendation of their superiors, the names of the petitioners were placed in promotion List C-II. It would be pertinent to mention, that the statutory provision under which the names of Constables are placed in promotion List C-II, is Rule 13.8 of the Punjab Police Rules, 1934 (hereinafter referred to as the 1934 Rules). Rule 13.8 of the 1934 Rules, is being extracted hereunder:-

"13.8. List C. Promotion to Head Constables:- (1) In each district a list shall be maintained in card index from (from

13.8(1)) of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub rule 13.5 (2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector General of Police at his annual inspection.

(2). Promotions to Head Constable shall be made in accordance with the principle described in sub rules 13.1(1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comprising qualifications. In case where other qualifications are equal, seniority in the police force shall be the deciding fact. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector General, be promoted to Head Constable upto a maximum of ten per cent of vacancies."

A perusal of the aforesaid rule reveals, that promotion from the post of Constable to the post of Head Constable, is open to such of the Constables who have qualified the Lower School Course. An exception to the aforesaid

pre-requisite for having to qualify the Lower School Course for promotion to the post of Head Constable, has been carved out in sub-rule (2) of Rule 13.8 of the 1934 Rules (extracted hereinabove) wherein a selection grade Constable, despite the fact that he has not qualified the Lower School Course, but is otherwise considered suitable, may be promoted to the rank of Head Constable. The names of such Constables who are considered suitable for promotion to the post of Head Constable, despite the fact that they had not qualified the Lower School Course, are placed in promotion List C-II. The aforesaid rule also envisages, that a maximum of 10% of the vacancies of the cadre of Head Constables, can be filled up from promotion List C-II. It is the contention of the learned counsel for the petitioners, that after the petitioners' names were entered in promotion List C-II, they became eligible to be considered for promotion against the rank of Head Constable, against 10% vacancies earmarked for Constables placed in promotion List C-II. It is also the contention of the learned counsel for the petitioners, that after the names of the petitioners were placed in promotion List C-II, there was no complaint against them in respect of their work and conduct. In fact, it is asserted, that the petitioners' work and conduct after their names were placed in promotion List C-II, has remained exemplary. The grievance of the petitioners, however, is that without affording an opportunity of hearing and/or calling any explanation of the petitioners, their names have been ordered to be removed from promotion List C-II by an order dated 28.6.2004 (Annexure P-2). It is this order which was subject matter of challenge at the hands of the petitioners through separate writ petitions (Hans Pal Vs. State of Punjab and others, C.W.P. No.11734 of

2004; Rajesh Kumar Vs. State of Punjab and others, C.W.P. No.12062 of 2004; Nand Lal Vs. State of Punjab and others, C.W.P. No.13297 of 2004 and Yash Pal and another Vs. State of Punjab and others, C.W.P. No.13668 of 2004). The aforesaid writ petitions came to be disposed of collectively by this Court on 6.1.2006. It would be pertinent to mention, that the aforesaid writ petitions were allowed. The order dated 28.6.2004 was set aside. Liberty was, however, granted to the respondents to pass a fresh order after affording an opportunity of hearing to the petitioners.

In the background of the factual position noticed hereinabove, show cause notices dated 7.3.2006 were issued to the petitioners individually. All the petitioners submitted their replies to the aforesaid show cause notices on 11.4.2006. Having considered the replies filed by the petitioners, and also having afforded an opportunity of personal hearing to the petitioners, the respondents by an order dated 13.7.2007 (Annexure P-8) ordered the removal of the petitioners' name from promotion List C-II. The order dated 13.7.2007 (Annexure P-8) has been challenged by the petitioners through the instant writ petition.

The first contention of the learned counsel for the petitioners, in order to raise a challenge against the impugned order dated 13.7.2007, is that the names of the petitioners from promotion List C-II, could only have been removed under Rule 13.8(A) of the 1934 Rules. Rule 13.8(A) of the 1934 Rules, is being reproduced hereunder:-

> 13.8-A. Disqualification for admission to or retention in Lists A, B or C.-(1) The infliction of any major punishment shall be a bar to admission to or retention in lists A, B or C, provided

> that (a) for special reasons to be recorded by the Superintendent in each case, and subject to confirmation by the Deputy Inspector General, this disqualification may be waived and (b) after six months' continuous good conduct in the case of censure or confinement to quarters or on expiry of the period of reduction in the case of reduction for a specified period, a constable may be re-admitted at the discretion of the Superintendent.
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> (2) Gazetted Officers shall look out for, and encourage their Inspectors and Sub-Inspectors to bring to notice, Constables who, by reason of their general character and ability or of special acts, are suited for inclusion in lists A, B or C, and shall, after satisfying themselves by necessary enquiries, make suitable recommendations to the Superintendent."

Relying on the aforesaid rule, it is the vehement contention of the learned counsel for the petitioners, that only when a major punishment is inflicted on a person whose name has been entered in any of the promotion lists, the same can be removed therefrom. It is also the contention of the learned counsel for the petitioners, that there is no other provision under the statutory rules which vested any authority in the respondents to remove the names of the petitioners from promotion List C-II.

The second contention of the learned counsel for the petitioners emerges from Rule 13.8 of the 1934 Rules (already extracted hereinabove). On the basis of Rule 13.8 of the 1934 Rules, it is the vehement contention of the learned counsel for the petitioners, that the restriction in sub-rule (2) of

Rule 13.8 of the 1934 Rules, is to the number of Constables who can be promoted to the rank of Head Constables. It is sought to be emphasised, that the aforesaid sub-rule envisaged a maximum of 10% of the vacancies in the cadre of Head Constables which can be filled up from amongst persons whose names are placed in promotion List C-II. It is, therefore, submitted by the learned counsel for the petitioners, that there is no prescribed limit of names to be placed in promotion List C-II.

The third contention of the learned counsel for the petitioners is, that the action of the respondents in removing the names of the petitioners from promotion List C-II has caused irreparable loss to the petitioners. In this behalf, it is pointed out, that according to the instructions issued by the respondents, the petitioners, despite their names having been entered in promotion List C-II, were still eligible for being deputed to the Lower School Course. It is pointed out, that those of the Constables whose names are placed in promotion List C-II are entitled to 5 extra marks while determining their inter se merit amongst Constables desirous of being deputed to the Lower School Course. It is, therefore, the vehement contention of the learned counsel for the petitioners, that the action of the respondents in removing the names of the petitioners from promotion List C-II, would result in prejudicing their claim for being deputed to the Lower School Course.

It is not necessary for us to delve into the various issues canvassed by the learned counsel for the petitioners, in view of the fact, that the impugned order has been passed with the clear understanding, that the action of placing the names of the petitioners in promotion List C-II, was

not in consonance with the statutory provisions. In this behalf, two deficiencies have been pointed out in the impugned order dated 13.7.2007. Firstly, that the names of the petitioners were placed in promotion List C-II by the Deputy Inspected General of Police, without any specific recommendation from the concerned Senior Superintendent of Police. Secondly, the number of names to be placed in promotion List C-II should not be in excess of 10% of the cadre strength of Head Constables.

We find merit in the speaking order passed by the respondents while removing the names of the petitioners from promotion List C-II. The petitioners have not placed on the record of this case the recommendation made by the Senior Superintendent of Police in favour of the petitioners suggesting, that their names should be placed in promotion List C-II. The aforesaid procedure, as has been asserted in the impugned order, clearly emerges from a collective perusal of sub-rules (1) and (2) of Rule 13.8 of the 1934 Rules. Even otherwise, we also find merit in the second reason depicted in the impugned order, namely, that the names in promotion List C-II should not be above 10% of the cadre strength of Head Constables of a particular district. This view is based on the decisions rendered by two Division Benches of this Court i.e. in S.I. Swaran Singh Vs. State of Punjab and others (Civil Writ Petition No.13788 of 1997, decided on 21.4.1998) and Lachhman Singh Vs. Director General of Police and others (Civil Writ Petition No.14844 of 1993, decided on 19.5.1998), wherein it has been held, that 10% quota envisaged under Rule 13.8 of the 1934 Rules for promoting Constables whose names have been placed in promotion List C-II (i.e., such Constables who have not qualified the Lower School

Course) cannot be in excess of 10% of the cadre strength of Head Constables. It is, therefore apparent, that the number of Constables who can be promoted from promotion List C-II, can under no circumstances, be in excess of 10% of the cadre strength of Head Constables. A situation wherein all the posts in the cadre of Head Constables becoming vacant at the same time i.e. the extreme situation, and in reality, is inconceivable. It is impossible, that all of a sudden, all those who man the rank of Head Constable would vacate the post either for reasons of promotions or punishment or retirement or death. The situation contemplated by the impugned order, however, takes into consideration such an eventuality, wherein all the posts in the rank of Head Constables fall vacant all of a sudden. Even if such an eventuality arises, the maximum number of promotions, that can be made to the rank of Head Constables from promotion List C-II, cannot exceed 10% of the cadre strength of Head Constables. The impugned order reveals, that the names in promotion List C-II have been restricted to 10% of the cadre strength of Head Constables. This list by itself restricted to 10% will take many years to exhaust in normal course. We find no infirmity in the aforesaid action of the respondents.

In view of the aforesaid analysis of the statutory rules governing the conditions of service of the petitioners, we are of the view, that the first contention raised by the learned counsel for the petitioners does not arise for consideration, as the names of the petitioners have been removed from promotion List C-II not on account of the fact, that they had been punished during the course of their employment, and not even on

account of their work and conduct, but because promotion List C-II was over subscribed. The analysis aforementioned also negates the second contention raised at the hands of the learned counsel for the petitioners, that there is no justification in placing any limit on the number of names to be placed in promotion List C-II. In so far as, the third contention of the learned counsel for the petitioners is concerned, the same is also misconceived in view of the interpretation placed by us on Rule 13.8 of the 1934 Rules, in the foregoing paragraphs, as the names of the petitioners were not removed from promotion List C-II on account of any deficiency on their part or to prejudice their claim, but for the simple reason, that promotion List C-II was over subscribed

For the reasons recorded hereinabove, we find no merit in this petition, and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(M.M.S. Bedi)
Judge.

09.08.2007
sk.